

OGC 72-0760

2 June 1972

OGC Has Reviewed

MEMORANDUM FOR THE RECORD

SUBJECT: Discussion with Mrs. [REDACTED] Attorney

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STATINTL

1. I discussed with Mr. John Kruse, Assistant Chief/Federal Tort Section/Civil Division/Department of Justice, several aspects of the [REDACTED] matter, including the BEC decision in the Rex Johnson case. Mr. Kruse was thoroughly familiar with the Johnson claim. In it Johnson had attempted to persuade first the BEC and subsequently the Employee Compensation Appeals Board not to make an award under the Federal Employees Compensation Act. He based his argument on the contention that he was not on duty at the time his injury occurred. He also brought suit under the Federal Tort Claims Act. Thus, he was attempting to avoid the exclusive remedy provision of the FEC Act with the intention of obtaining a greater amount by the suit under the FTC Act. Mr. Kruse advised that the problem in the Johnson case was that Johnson was represented by an entirely inadequate attorney who simply did not understand the law. BEC was indeed quite concerned to protect Johnson from the inadequacies of his own lawyer. He also advised that he saw no circumstance which would lead [REDACTED] to forego BEC or to hold up STATINTL on applying for the benefit.

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2. On the basis of this discussion, I felt entirely satisfied that our initial analysis of the law is correct; that there is no discretionary decision for [REDACTED] to make and her entitlements under BEC are available and should be sought. Accordingly, when I met with her attorney, Mr. Alan Massengill, yesterday I did not refer him to the Rex Johnson case nor did I directly invite him to study his possible actions and to inform us whether or not he wanted the BEC claim filed. At one stage, I did say that we accordingly are going to file the claim "unless of course you want us not to." He immediately asked if there was any benefit to [REDACTED] delay filing. I told him I knew of none. It is in order, therefore, for us to go ahead and file the claim.

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3. Mr. Massengill of course has not decided what actions [REDACTED] should undertake, specifically whether to sue. He [REDACTED] am asked to be informed as to the insurance coverage [REDACTED] carried, which I declined to give him since I felt this was properly a matter only [REDACTED] or his attorney could provide. I did promise to alert [REDACTED] attorney, Mr. Charles Woodward, that Mr. Massengill is going to call and request this. In my discussion with Mr. Woodward, I told him that from our point of view we see no reason not to furnish this information. Mr. Woodward seemed quite reluctant in this matter, however, and I am not sure that he is going to reply when Massengill calls.

4. I have promised also to get for Massengill in writing the figures on the FEC award [REDACTED] the children will receive, assuming that an award is made. [REDACTED] is getting this up for [REDACTED] STATINTL STATINTL me.

STATINTL

[REDACTED]
Associate General Counsel

OGC;RHL:sin
Original - : subj / ACCIDENTS
1 - RHL signer
1 - Chrono